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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,441	03/12/2004	Yumiko Abe	2004-0399A	5255
513 7590 11/06/2008 WENDEROTH, LIND & PONACK, L.L.P. 2033 K STREET N. W. SUITE 800 WASHINGTON, DC 20006-1021			EXAMINER JEAN, FRANTZ B	
			ART UNIT 2454	PAPER NUMBER
			MAIL DATE 11/06/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/798,441

Applicant(s)

ABE ET AL.

Examiner

Frantz B. Jean

Art Unit

2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-10 and 12-21 is/are rejected.
- 7) ☐ Claim(s) 3 and 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 6/18/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

This is a first office action in response to application for patent filed on 3/12/04. Claims 1-20 are presented for examination.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 06/18/04 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections. 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-20 recites the limitation "the self-terminal". There is insufficient antecedent basis for this limitation in the claim.

Claims 8 and 17 recite the limitation "the type of media". There is insufficient antecedent basis for this limitation in the claim.

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Claims 9 and 16 recite the limitation "the error rate". There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites the limitation "the reception sensitivity". There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the respective routes". There is insufficient antecedent basis for this limitation in the claim.

Claim 18 recites the limitation "the packet". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21 (2) of such treaty in the English language.

Claims 1-2, 4-8, 10 and 18-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Akahane et al. (hereinafter Akahane US patent number 6,778,532.

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As per claims 1 and 18-21 Akahane teaches a communication system comprising plural communication terminals each having a relay function (fig 2; col. 9 lines 28-35), and a host having a relay function and a route control function (fig 1), wherein during route search (fig 1), said communication terminal adds an ID of the self-terminal to a route wherein said IDs are specific codes (see fig 6-9).

As per claim 7, Akahane teaches a communication system as defined in claim 1, wherein said host and said communication terminal obtain data indicating the communication state between the self-terminal and a packet transmission source terminal, and adds the data indicating the communication state to the route search packet; and said host selects an optimum route on the basis of the data indicating the communication state (col. 23 lines 60-63; fig 15).

As per claim 8, Akahane teaches a communication system as defined in claim 7, wherein said data indicating the communication state is the type of media (col. 11 lines 35-44).

As per claim 9, Akahane teaches a communication system as defined in claim 7, wherein said data indicating the communication state is the error rate.

As per claim 10, Akahane teaches a communication system as defined in claim 7, wherein said data indicating the communication state is the reception sensitivity (col. 11 lines 23 et seq).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Akahane.

Akahane fails to teach a state that is an error rate. Official notice is taken that both the concept and advantages of providing an error rate is well known and recognized in the

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art to avoid system failure. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate an error rate into Akahane's in order to prevent a system malfunction.

Claims 12-17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Akahane. Akahane teaches all the limitations of claims 12 and 14-17 as discussed above (see also col. 22 line 45 to col. 24) except assigning priorities. Official notice is taken that both the concept and advantages of assigning priority is well known and recognized in the art for transferring information. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate this feature into Akahane for transferring information in a specific and well determined ordered.

As per claim 13, Akahane teaches communication system as defined in claim 12, wherein when data communication is not carried out, said host investigates the routes entered in the database, and updates the route information entered in the database On the basis of the results of the route investigation and data communication (col. 22 line 45 to col. 24).

Allowable Subject Matter

Claims 3 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz B. Jean whose telephone number is 571-272-3937. The examiner can normally be reached on 8:30-6:00 M-f.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on 571-272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Frantz B. Jean/
Primary Examiner, Art Unit 2154